

BOARD OF APPEALS CASE NO. 5214

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BEFORE THE

**APPLICANTS: Concord Baptist Church, Inc.
and Earlene Thomas**

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ZONING HEARING EXAMINER

**REQUEST: Special Exception and variance to
allow the existing camp retreat not located on an
arterial/collector road; 4839 Jolly Acres Road,
White Hall**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/23/02 & 1/30/02

HEARING DATE: March 11, 2002

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Record: 1/25/02 & 2/1/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Earlene Thomas and Concord Baptist Church, Inc., are requesting a special exception pursuant to Section 267-53F(2) of the Harford County Code, to allow an existing camp/retreat facility and a variance, pursuant to Section 267-53F(2)(b), to allow the facility to be located on a road that is not a collector or arterial road in an Agricultural District.

The subject parcel is located at 4839 Jolly Acres Road, White Hall, Maryland 21161 and is more particularly identified on Tax Map 8, Grid 4A, Parcel 230, Lot 4. The parcel consists of 66.4± acres, is zoned AG/Agricultural and is entirely within the Fourth Election District.

Mr. Douglas Kennedy appeared on behalf of the Applicant and qualified as an expert civil engineer and land planner. The witness described the location of the parcel as being in the northwest corner of the county and bordering Deer Creek. The parcel is about 67 acres and is 60% wooded. Since the 1950's, the parcel has been used as a campground/church retreat area. The parcel is irregularly shaped and is accessed from the southeast side of Jolly Acres Road. To the north is the Parker Conservation Area which is owned by Harford County. While the parcel has over 229 feet of frontage on Jolly Acres Road, access is limited because of the location of Deer Creek. The parcel is improved by a 120 seat church, 3 pavilions, an in-ground swimming pool, bath house, basketball court, 6 dormitories and a parking area. There is also the foundation of a dining hall that burned down several years ago. Planned is the addition of 4 dormitories, a reconstructed dining hall, a storage facility and parking area. The existing structures will be maintained. The maximum number of persons using the facility at any one time is 120. There will be a full time caretaker and resident manager.

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The witness stated that the parcel and use were the subject of an earlier case, namely Board of Appeals Case No. 2988 decided in October, 1983. In Case No. 2988, the Applicant was granted an extension of an existing non-conforming use to construct 4 dormitories as an extension of the retreat/camp ground already existing as a non-conforming use. According to the witness this use has existed for many years without adverse impacts and if granted, this request would nullify the non-conformity and bring the use into conformance with the current Code. The property, according to the witness is very unique, containing limited access, steep slopes, wetlands, floodplain and Deer Creek borders a great deal of the property.

Upon cross examination by opponents of the request, the witness indicated that the access road is narrow and of stone and gravel composition. There are a number of steep slopes on the road and sight distance is limited. The witness admitted that two cars could not pass easily on this road and that there was no other means of ingress/egress. The witness did state that the Code anticipates a campground will have overnight RV campers and this proposed use is only dormitory style camping. The Applicant would agree to a condition that RV's not be allowed.

The Reverend Matthew L. Jones appeared next and testified he is the pastor of the Church and has served in that capacity for 15 years. He indicated that campers have been and will continue to be transported to the site via the church owned buses. One bus holds 45 and another 25. He stated that there have been no accidents in the 15 years that he has been Pastor of the Church.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning. Mr. McClune confirmed much of the testimony of Mr. Kennedy regarding the topography, location, surrounding uses and existing use of the parcel. Mr. McClune admitted that the prior case (Case 2988), affords almost identical relief to the Applicant as this case. The difference is that the former case imposes no limitations on the number of campers allowed at the retreat nor does it regulate the use of the facility by RV's. Additionally, allowing the use as a special exception eliminates the non-conformity which is a desirable goal of any land planner.

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The Department feels that this use as a special exception will impose certain restrictions that will provide the control not afforded by way of a non-conformity. As to Jolly Acres Road, Mr. McClune said it was much like other roads found in rural Harford County.

A number of persons appeared in opposition to the request. Mrs. Etta Benson appeared and testified that she lives on Jolly Acres Road. She described the road as very narrow and steep. The road is unpaved stone and gravel and there are areas that are very difficult to travel during inclement weather. Because of existing rock formations the road cannot be widened easily. It is almost impossible for two cars to pass on the road and there have been past problems with trucks trying to traverse the road. On occasion, the witness indicated that she has had to back up to allow trucks to pass her on the road.

Mr. Donald Kilduff appeared and testified that he lives to the south of the Applicant's property. His concerns are noise, trespassers and safety issues related to the road. He lives 600 yards from the subject property and users of the retreat have trespassed on his property in the past despite posting signs located on his property. Noise has also been troublesome, particularly when the pavilions use loudspeaker setups. The witness also confirmed that the road is narrow, difficult to pass and has areas of steep slopes.

Ms. Judith Billingslea appeared and testified that she is pleased that a church group is using the property but is concerned about children being transported in buses along Jolly Acres Road. She described the road as narrow and dangerous and believes passengers on buses are in real danger along the road. She has personally had close calls and narrowly avoided accidents on this road in the past.

CONCLUSION:

The Applicants, Earlene Thomas and Concord Baptist Church, Inc., are requesting a special exception pursuant to Section 267-53F(2) of the Harford County Code, to allow an existing camp/retreat facility, and a variance, pursuant to Section 267-53F(2)(b), to allow the facility to be located on a road that is not a collector or arterial road in an AG District.

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Harford County Code Section 267-53F(2) provides as follows:

“Camps, retreats and recreational vehicle parks. These uses may be granted in the AG District, provided that:

- (a) Recreational vehicle parks shall contain electrical and water outlets for individual sites, one (1) or more central sanitary stations, toilets and shower facilities.**
- (b) The parcel shall have a minimum frontage of two hundred (200) feet on a collector or arterial road.**
- (c) The maximum density permitted shall be ten (10) campsites or rooms per acre, with a minimum campsite size of three thousand (3,000) square feet. All campsites shall be at least fifty (50) feet from any property line.**
- (d) One (1) freestanding sign, not more than fifty (50) square feet in area and not more than twenty-five (25) feet in height, shall be permitted along each road frontage. Building-identification signs shall be attached to buildings and shall not exceed a total of ten (10) square feet.**
- (e) The only permitted permanent residential occupancy shall be for the resident owner or manager.”**

Harford County Code Section 267-51 provides as follows:

“Purpose.

Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

Harford County Code Section 267-52 of the Code provides:

“General regulations.

- A. Special exceptions require the approval of the Board in accordance with Section 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**

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- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.”**

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."**

The Hearing Examiner finds at the onset that the Applicant can meet or exceed all of the requirements of Section 267-53F(2), except 267-53F(2)(b) which is the subject of the requested variance. Additionally, there is no question that the subject parcel has topographical uniqueness that constrains and burdens it.

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The standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

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Applying the standards enunciated in Schultz, however, the Hearing Examiner concludes that this use, at this location, poses a potential danger to users of Jolly Acres Road. The testimony of all witnesses was unanimous that this road is very narrow, is of stone and gravel composition, has steep slope areas, areas of limited sight distance and cannot be widened or improved due to rock formations, steep areas and general unfavorable topography. Harford County Schools will not allow school buses to travel on most of Jolly Acres Road bordering the Applicant's property. During winter months the road is nearly impassable. Based on the potential hazards to vehicle passengers, the Hearing Examiner cannot in good conscience find that the proposed use at the proposed location will not have adverse impacts above and beyond those associated with such a use regardless of its location within the zone.

The Hearing Examiner recognizes that, despite this finding, the actual use in question will continue as a non-conformity and no mitigation of the dangerous conditions created will result. However, the existing use and extension of that use are already permitted by way of an existing non-conforming use and the grant of the extension of that non-conforming use by virtue of the decision in Board of Appeals Case No. 2988. However, there is always a desire and a hope that a non-conforming use will cease by way of abandonment. To allow the nonconforming use to become a permitted use through the grant of a special exception, particularly when significant safety issues exist with a particular application, would serve to perpetuate a use that the Code deems to be undesirable for continued use.

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.

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2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists." Cromwell v. Ward, 102 Md. App. 691 (1995).

Importantly, it is more than a mere finding of topographical uniqueness that allows the grant of a variance. The uniqueness must result in a need for the variance without which, the Applicant would suffer a hardship. That is not the case here. A denial of the requested relief will not alter in any way, the current or proposed use because the use is a nonconforming one that predates the current Code. The extension to add 4 dormitories has already been granted by virtue of Board of Appeals Case No. 2988.

Lastly, the provisions of Section 267-11 of the Harford County Code allow a variance in those instances where unique topographical conditions create an unusual hardship warranting the variance, but only if relief may be granted in a manner that will not materially impair the public health or safety. The Code requires that uses such as the Applicant's be located on collector or arterial roads recognizing the dangers inherent in large vehicles like RV's, pull-along trailers, campers and buses entering and leaving such facilities. In this case the road conditions are indisputably hazardous and are, according to all of the witnesses, unalterable.

For all of the reasons stated herein, the Hearing Examiner recommends denial of the requests.

Date: APRIL 4, 2002

William F. Casey
Zoning Hearing Examiner

